

A

THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

**D.R. HORTON, INC., WESTERN  
PACIFIC HOUSING, INC., and  
WESTERN PACIFIC HOUSING  
MANAGEMENT, INC.**

Plaintiffs,

**V.**

ST. PAUL MERCURY INSURANCE  
COMPANY

Defendant.



CIVIL ACTION NO. \_\_\_\_\_

**EXHIBIT "A" TO NOTICE OF REMOVAL**  
**INDEX OF DOCUMENTS**

Pursuant to Local Rule 81.1(a) of the United States District Court for the Northern District of Texas, documents filed in the state court action are attached as follows:

<b><u>Document</u></b>	<b><u>Party</u></b>	<b><u>Date Filed</u></b>
1. Tarrant County District Clerk's Office All Transactions for a Case for Case No 096-244779-10	Court	N/A
2. Civil Docket for 096-244779-10 (blank)	Court	N/A
3. Plaintiffs' Original Petition	Plaintiffs	April 8, 2010
4. Citation Issued	Court	April 8, 2010
5. Citation Returned	Plaintiffs	April 20, 2010
6. Original Answer of St. Paul Mercury Insurance Company	Defendant	May 10, 2010

**1**

JIMSGTM8

TARRANT COUNTY DISTRICT CLERK'S OFFICE  
ALL TRANSACTIONS FOR A CASEPage: 1  
Date: 05/13/2010  
Time: 10:11

Cause Number: 096-244779-10		Date Filed: 04/08/2010	
D.R. HORTON, INC., ET AL	v	ST. PAUL MERCURY INSURANCE	
	s	COMPANY	
Cause of Action: CONTRACT			
Case Status.....: PENDING			

Filemark	Description		Fee Total
04/08/2010	PLTFS ORIGINAL PETITION	NI	249.00
04/08/2010	COURT COST (PAID) trans #1	Y	249.00
04/08/2010	Citation-ISSUED ON ST PAUL MERCURY INSURANCE	NI	8.00
04/08/2010	COURT COST (PAID) trans #3	Y	8.00
04/08/2010	JURY FEE	N	30.00
04/08/2010	COURT COST (PAID) trans #5	Y	30.00
05/10/2010	DEFN ST PAUL MERCURY INS CO'S ORIG ANS	I	0.00

Total Number Of Records Printed: 7

A CERTIFIED COPY

ATTEST: May 13, 2010  
THOMAS A. WILDER  
DISTRICT CLERK  
TARRANT COUNTY, TEXASBY: Dea Reilly  
DEPUTY

**2**

# Civil Docket

Discovery: 2

096-244779-10

Cause Of Action: CONTRACT

## NAMES OF PARTIES

## ATTORNEYS

A CERTIFIED COPY

ATTEST: May 13, 2010

THOMAS A. WILDER  
DISTRICT CLERK  
TARRANT COUNTY, TEXAS

BY: Dea Kelly  
DEPUTY

Date Filed  
04/08/2010

D.R. HORTON, INC., ET AL.

EVANS, BLAKE S

STE 630

900 JACKSON ST.

DALLAS, TX 75202

BarID: 06706950TX

Ph (214) 744-4400

PLTF

VS.

VS.

SCHUBERT & EVANS P.C.

ST. PAUL MERCURY INSURANCE  
COMPANY

D.R. HORTON  
INC

## ORDERS OF COURT

Was Steno Used?

Date of Orders

05/14/10

Case 4:10-cv-00350-A Document 1-3 Filed 05/14/10 Page 6 of 22

096-244779-10

3





4. Plaintiff Western Pacific Housing Management, Inc. is a California corporation with its principal place of business in Texas.

5. Defendant St. Paul Mercury Insurance Company is a Minnesota corporation with its principal place of business in St. Paul, Minnesota, which has conducted, and is conducting, business in Texas. St. Paul Mercury Insurance Company may be served with process by serving its registered agent, Corporation Service Company, 211 East 7<sup>th</sup> Ste. 620 Street, Austin, Texas 78701-3218.

### **III.**

#### **VENUE AND JURISDICTION**

6. The foregoing paragraphs are incorporated herein by reference.

7. Venue is proper in Tarrant County, Texas under TEX.CIV.PRAC.&REM.CODE § 15.002(a)(1) in that all or a substantial part of the events or omissions giving rise to the claims occurred in Tarrant County, Texas.

8. This Court has jurisdiction over this matter under TEX.CIV.PRAC.&REM.CODE § 17.042 and because the amount in controversy exceeds this Court's minimum jurisdictional limit.

### **IV.**

#### **BACKGROUND FACTS**

##### **A. D.R.HORTON AND THE ST. PAUL EPL POLICIES**

9. D.R Horton, Inc. ("D.R. Horton") is a homebuilder that constructs residences throughout the United States. Western Pacific Housing, Inc. ("WPH") and Western Pacific Housing Management, Inc. ("WPH Management") are subsidiaries of D.R. Horton that are used for operations in California (hereinafter, unless otherwise noted any

reference to "D.R. Horton" will mean D.R. Horton, WPH, and WPH Management). D.R. Horton purchased an employment practices liability ("EPL") policy from Defendant St. Paul Mercury Insurance Company ("St. Paul"), policy number 568CM2680, for the period July 1, 2006 to July 1, 2007 (the "06-07 Policy"). The 06-07 Policy contains a \$5 million limit of liability, along with a retained limit or self-insured retention ("SIR") in the amount of \$250,000 per "Claim". The 06-07 Policy was renewed for the following year, policy number EC06800852, July 1, 2007 to July 1, 2008, with the same limits and SIR amount as the 06-07 Policy (the "07-08 Policy") (both the 06-07 and 07-08 Policies will be collectively referred to hereinafter as the "St. Paul Policies"). WPH and WPH Management qualify as Insureds under the St. Paul Policies.

**B. THE COVERAGE DISPUTE AND ST. PAUL'S FAILURE TO REIMBURSE DEFENSE COSTS**

10. During the periods of coverage afforded under the St. Paul Policies, several employment-related claims were made against D.R. Horton in California and other jurisdictions. Some of these claims were pursued through administrative agency channels, while others involved litigation and/or arbitration. Still others involved both. D.R. Horton retained a nationally-recognized employment litigation law firm to defend itself against these claims. Given the magnitude and volume of claims, D.R. Horton believed, and continues to believe, that the retention of the firm has been critical to the overall defense effort and limitation of exposure. Moreover, D.R. Horton also recognized that certain efficiencies and cost savings could be realized by utilizing one firm to defend all of these claims. St. Paul specifically approved of D.R. Horton's selection of defense counsel as well.

11. Per the requirements of the applicable SIR provision, D.R. Horton fulfilled its contractual obligation to initially pay defense costs incurred on the claims. St. Paul's handling of these claims, however, has been inconsistent at best. On some claims, St. Paul would frequently request status updates from D.R. Horton or directly contact defense counsel (sometimes without notice to D.R. Horton) regarding the procedural posture of the case, recent developments, and the status of settlement negotiations. On other claims, D.R. Horton would hear nothing from St. Paul, and St. Paul would ignore inquiries regarding coverage positions for months. When requested, D.R. Horton and/or defense counsel promptly responded with information on the status and exposure presented by the claim. On some claims, the defense bills were sent directly to St. Paul, who in turn forwarded them onto to D.R. Horton for payment, noting that defense costs fell within the applicable SIR amount.

12. In 2009, the SIR limits on several claims were exhausted. Those claims include the following:

- *Marguerite Michel v. D.R. Horton, Inc. et al.*; Claim No. F0812035
- *Marina Sanchez v. D.R. Horton, Inc. et al.*; Claim No. F0805292

13. In accordance with the terms of the St. Paul Policies, D.R. Horton timely and appropriately notified St. Paul of the exhaustion and demanded reimbursement of defense costs in excess of the SIR limit. St. Paul denied D.R. Horton's claims, citing violation of a provision in the Policies prohibiting D.R. Horton from, among other things, incurring any additional defense costs after 50% of the SIR had been exhausted without prior consent. Importantly, the provision at issue also requires that such consent will not be *unreasonably withheld*. D.R. Horton did not violate this provision, however. In

reservation-of-rights correspondence sent at the outset of the claim, St. Paul noted that the claim may reach 50% of the applicable SIR limit and expressly consented to the retention of D.R. Horton's chosen outside counsel. Accordingly, St. Paul's handling of these claims clearly evidences the required consent, or at a minimum waiver of such consent, to D.R. Horton's selection of counsel and the reasonable rates charged for that work.

14. Further, even if D.R. Horton failed to obtain consent on some claims, it would have been unreasonable under the particular circumstances involved to withhold consent effectively "midstream" when the 50% figure was reached. Finally, St. Paul sustained no prejudice as a result of D.R. Horton's failure, if any, to secure such consent.

15. D.R. Horton has made repeated demands on St. Paul to fully reimburse D.R. Horton for amounts paid on several claims in excess of the applicable SIR. To date, St. Paul has failed to reimburse D.R. Horton for a significant portion of reasonable and necessary fees and expenses incurred by D.R. Horton in the defense of certain claims.

## **V.**

### **CAUSES OF ACTION**

#### **A. BREACH OF CONTRACT**

16. D.R. Horton alleges and incorporates by reference the foregoing paragraphs.

17. Under the Policies and the SIR endorsements, St. Paul is required to reimburse D.R. Horton for all fees and expenses it incurs on otherwise-covered claims in excess of the applicable SIR amount. St. Paul has breached its contract of insurance by failing to timely reimburse D.R. Horton for a significant portion of the reasonable and necessary defense costs incurred in certain claims in which the SIR limit was exhausted.

18. D.R. Horton has fully performed any and all applicable conditions precedent to full recovery under the Policies.

19. D.R. Horton specifically alleges that the Policies at issue unambiguously obligate St. Paul to reimburse D.R. Horton for the subject fees and expenses, or, alternatively, that the Policies are ambiguous and all ambiguities are resolved in favor of coverage and reimbursement.

20. D.R. Horton is entitled to recover its reasonable and necessary attorneys' fees and expenses incurred as a result of St. Paul's breach of contract pursuant to §38.001 of the Texas Civil Practice and Remedies Code.

#### **B. INSURANCE CODE VIOLATIONS**

21. St. Paul violated TEX.INS.CODE §542.051 *et seq.* by failing to timely reimburse D.R. Horton for certain defense expenses and refusing to reimburse D.R. Horton for other defense expenses incurred after exhaustion of the applicable SIR limit on certain claims. Accordingly, D.R. Horton is entitled to recover, in addition to the defense expenses owed, a statutory 18% penalty and reasonable and necessary attorneys' fees and expenses under TEX.INS.CODE §542.060.

22. St. Paul has also violated TEX.INS.CODE §541.060(a)(2)(A) because it refused and failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of a claim with respect to which St. Paul's liability had become reasonably clear.

23. St. Paul's conduct caused, and continues to cause, D.R. Horton injury and D.R. Horton is entitled to damages within the jurisdictional limits of this Court, as well as its attorneys' fees, costs and expenses pursuant to TEX.INS.CODE §§541.060, 541.151 and 541.152.

VI.

**JURY DEMAND**

24. D.R. Horton respectfully demands a trial by jury as to its causes of action and hereby pays the jury fee of \$30.00 to the Clerk of the Court.

VII.

**PRAYER**

WHEREFORE, Plaintiffs request this Court grant them the following relief:

(1) Judgment awarding Plaintiffs all damages suffered as a result of the breaches of contract by St. Paul in failing to reimburse costs and expenses related to the defense of covered claims under the Policies at issue;

(2) Statutory interest of 18% pursuant to TEX.INS.CODE §542.051, *et seq.*;

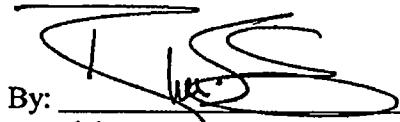
(3) Actual damages, treble damages and penalties pursuant to TEX.INS.CODE §541.060, §541.151 and §541.152;

(4) Judgment that the Plaintiffs are entitled to recover their costs, expenses and reasonable attorneys' fees against St. Paul under TEX.CIV.PRAC.&REM.CODE §38.001, TEX.INS.CODE §§542.051 *et seq.* and 541.060 *et seq.*

(5) Judgment awarding Plaintiffs' pre-judgment and post-judgment interest in the amount allowed by law;

(6) Such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

  
By: \_\_\_\_\_

Blake S. Evans

~~State Bar No. 06706950~~

Stephen Burnett

State Bar No. 24006931

**SCHUBERT & EVANS, P.C.**

900 Jackson, Suite 630

Dallas, Texas 75202

Telephone: 214.744.4400

Facsimile: 214.744.4403

**ATTORNEYS FOR PLAINTIFFS**

**D. R. HORTON, INC., WESTERN  
PACIFIC HOUSING, INC., AND  
WESTERN PACIFIC HOUSING  
MANAGEMENT, INC.**



SCHUBERT | EVANS  
ATTORNEYS AND COUNSELORS

April 8, 2010

**VIA HAND DELIVERY**

096 244779 10

Thomas A. Wilder  
Tarrant County District Clerk  
Justice Center, 3rd Floor  
401 W. Belknap  
Fort Worth, TX 76196

Re: *D.R. Horton, Inc., Western Pacific Housing, Inc., and Western Pacific Housing Management, Inc. v. St. Paul Mercury Insurance Company*; in the District Courts of Tarrant County, Texas

Dear Mr. Wilder:

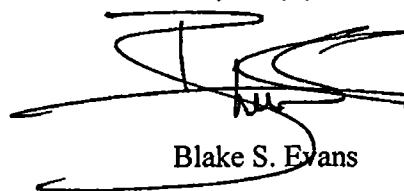
Enclosed are an original and two (2) copies of Plaintiffs' Original Petition for filing in the Tarrant County District courts. Please return one of the file-marked copies to the waiting courier.

Please use the remaining additional copy to issue citation to the named Defendant, St. Paul Mercury Insurance Company, as indicated in the Petition. Once issued, please return the citation to the waiting courier.

Enclosed is our check in the amount of \$287.00 representing the filing fee of \$249, \$30 for the jury fee and \$8 for the issuance of citation to the Defendant.

Your assistance in this matter is greatly appreciated.

Very truly yours,



Blake S. Evans

BSE/jea  
Enclosures

04/08/10 (Date)  
sent a copy of letter  
To Doc prod PK (initials).

FILED  
TARRANT COUNTY  
2010 APR -8 PM 1:23  
THOMAS A. WILDER  
DISTRICT CLERK



**4**

THE STATE OF TEXAS  
DISTRICT COURT, TARRANT COUNTY

CITATION

Cause No. 096-244779-10

D.R. HORTON, INC., ET AL  
VS.  
ST. PAUL MERCURY INSURANCE COMPANY

TO: ST PAUL MERCURY INSURANCE COMPANY

B/S REG AGENT CORPORATION SERVICE COMPANY 211 E 7TH STE 620 STREET AUSTIN, T  
78701-3218

You said DEFENDANT are hereby commanded to appear by filing a written answer to the PLAINTIFF'S ORIGINAL PETITION at or before 10 o'clock A.M. of the Monday next after the expiration of 20 days after the date of service hereof before the 96th District Court, 401 W BELKNAP, in and for Tarrant County, Texas, at the Courthouse in the City of Fort Worth, Tarrant County, Texas said PLAINTIFF being

D.R. HORTON INC

Filed in said Court on April 8th, 2010 Against  
ST PAUL MERCURY INSURANCE COMPANY

For suit, said suit being numbered 096-244779-10 the nature of which demand is as shown on said PLAINTIFF'S ORIGINAL PETITION a copy of which accompanies this citation.

BLAKE S EVANS

Attorney for D.R. HORTON INC Phone No. (214)744-4400  
Address STE 630 900 JACKSON ST DALLAS, TX 75202

Thomas A. Wilder, Clerk of the District Court of Tarrant County, Texas. Given under my hand and the seal of said Court, at office in the City of Fort Worth, this the 8th day of April, 2010.

By

*Juanita Vega*

Deputy

JUANITA VEGA

NOTICE: You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 AM. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Thomas A. Wilder, Tarrant County District Clerk, 401 W BELKNAP, FORT WORTH TX 76196-0402

OFFICER'S RETURN

Received this Citation on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M; and executed at \_\_\_\_\_ within the county of \_\_\_\_\_, State of \_\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ M on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ by delivering to the within named (Def.): \_\_\_\_\_ defendant(s), a true copy of this Citation together with the accompanying copy of PLAINTIFF'S ORIGINAL PETITION, having first endorsed on same the date of delivery.

Authorized Person/Constable/Sheriff: \_\_\_\_\_

County of \_\_\_\_\_ State of \_\_\_\_\_ By \_\_\_\_\_ Deputy

Fees \$ \_\_\_\_\_

State of \_\_\_\_\_ County of \_\_\_\_\_ (Must be verified if served outside the State of Texas)

Signed and sworn to by the said \_\_\_\_\_ before me this \_\_\_\_\_ day of \_\_\_\_\_

A CERTIFIED COPY  
(Seal) \_\_\_\_\_ witness my hand and seal of office

ATTEST: May 13, 2010  
THOMAS A. WILDER  
DISTRICT CLERK  
TARRANT COUNTY, TEXAS

County of \_\_\_\_\_, State of \_\_\_\_\_

BY: Lisa Rully  
DEPUTY

*CITATION*

Cause No. 096-244779-10

D.R. HORTON, INC., ET AL

VS.

ST. PAUL MERCURY INSURANCE  
COMPANY

ISSUED

This 8th day of April, 2010

Thomas A. Wilder  
Tarrant County District Clerk  
401 W BELKNAP  
FORT WORTH TX 76196-0402

By JUANITA VEGA Deputy

BLAKE S EVANS

Attorney for: D.R. HORTON INC  
Phone No. (214)744-4400  
ADDRESS: STE 630  
900 JACKSON ST  
DALLAS, TX 75202

*CIVIL LAW*



\*09624477910000003\*

SERVICE FEES NOT COLLECTED  
BY TARRANT COUNTY DISTRICT CLERK

FILED  
TARRANT COUNTY CLERK

2010 APR 20 PM 2:31

FILED  
TARRANT COUNTY CLERK

**5**

**AFFIDAVIT OF SERVICE**

**Plaintiff's Original Petition and Citation**

Case Number: 096-244779-10

Plaintiff:

D.R. Horton, Inc., et al

vs.

Defendant:

St. Paul Mercury Insurance Company

Received by Smart Choice Process Service, Inc. on the 9th day of April, 2010 at 6:38 pm to be served on **St. Paul Mercury Insurance Company by serving it's Registered Agent, Corporation Service Company, 211 E. 7th Street, Ste.-620, Austin, TX 78701-3218.**

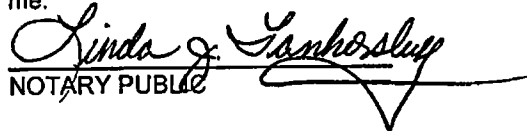
I, Michael E. Wigginton, being duly sworn, depose and say that on the **15th day of April, 2010 at 9:25 am, I:**

served an **AUTHORIZED** entity by delivering a true copy of the **Plaintiff's Original Petition and Citation** with the date and hour of service endorsed thereon by me, to: **Susan Vertrees as Authorized Person To Accept** at the address of: **211 E. 7th Street, Ste.-620, Austin, TX 78701-3218**, who stated they are authorized to accept service for **St. Paul Mercury Insurance Company**, and informed said person of the contents therein.

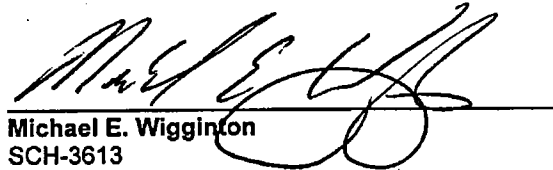
I certify that I am approved by the Supreme Court of Texas, Misc. Docket No. 05-9122 under Rule 103 and 536(a) of the TRCP to serve citations and other notices from any District, County and Justice Courts in and for the State of Texas.

I am over eighteen (18) years of age and not a party to nor interested in the outcome of the above numbered suit. I am authorized to serve citations and other notices in this cause by The Texas Supreme Court.

Subscribed and Sworn to before me on the 15th day of April, 2010 by the affiant who is personally known to me.

  
NOTARY PUBLIC



  
Michael E. Wigginton  
SCH-3613

Smart Choice Process Service, Inc.  
P.O. Box 852188  
Mesquite, TX 75185-2188  
(214) 742-3100

Our Job Serial Number: 2010000516

LINDA J. TANKERSLEY  
Notary Public, State of Texas  
My Commission Exp. 08-01-2011

**SMART CHOICE PROCESS SERVICE, INC.**

P.O. Box 852188  
Mesquite, Texas 75185-2188  
214/742-3100 OR 214/742-3131 (FAX)

Thomas A. Wilder, Tarrant County District Clerk  
Attn: Intake Department  
401 W. Belknap  
Fort Worth, Texas 76196-04021

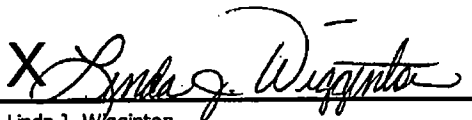
Re: D.R. Horton, Inc., et al  
Cause No. 096-244779-10

Dear Sir/Madame:

Please find enclosed (1) Original, to be file- marked by the courts. Please retain the Original for your records and return the (1) File-marked copies in the self-addressed stamped envelope enclosed for your convenience.

Should you have any questions or concerns regarding this matter please do not hesitate to contact me at anytime. We sincerely appreciate your prompt attention to this matter.

Sincerely,



Linda J. Wigginton  
Administrative Assistant

Enclosures

2010 APR 20 PM 2:31  
TARRANT COUNTY  
DISTRICT CLERK

6

**CAUSE NO. 096-244779-10**

**D.R. HORTON, INC., WESTERN PACIFIC  
HOUSING, INC., and WESTERN PACIFIC  
HOUSING MANAGEMENT, INC.**

**Plaintiffs,**

V.

**ST. PAUL MERCURY INSURANCE  
COMPANY**

**Defendant.**

IN THE DISTRICT COURT

TARRANT COUNTY, TEXAS

96<sup>th</sup> JUDICIAL DISTRICT

**DEFENDANT ST. PAUL MERCURY INSURANCE COMPANY'S ORIGINAL ANSWER**

Defendant St. Paul Mercury Insurance Company ("St. Paul") responds to Plaintiffs' Original Petition as follows:

## I. GENERAL DENIAL

1. Pursuant to Rule 92 of the Texas Rules of Civil Procedure, St. Paul denies the material allegations in the Plaintiffs' Original Petition, and any subsequent amendments thereto, and demands strict proof thereof.

## II. AFFIRMATIVE AND OTHER DEFENSES

2. Plaintiffs are not entitled to coverage to the extent the fees and expenses they seek are not covered “Loss” as defined in the applicable Policy. Specifically, “Loss” includes “Defense Costs” which is defined by both subject Policies in Subsection IV.D., entitled “Definitions,” as:

That part of Loss consisting of reasonable costs, charges, fees and expenses including but not limited to attorneys' fees, investigators' fees, and experts' fees incurred in the defense or investigation of Claims. . .

DEFENDANT ST. PAUL MERCURY INSURANCE COMPANY'S ORIGINAL ANSWER  
537103.2

**A CERTIFIED COPY**

ATTEST: May 13, 2010  
PAGE 14  
 THOMAS A. WILDER  
 DISTRICT CLERK  
 TARRANT COUNTY, TEXAS

BY: Dea Reilly  
 DEPUTY



3. Plaintiffs are barred, in whole or in part, due to their failure to comply with the condition of coverage in the applicable Policy as set forth in Subsection VI.C., entitled "Defense and Settlement," as modified by Endorsement MEL 4492 Ed. 8-06, which provides that:

With respect to any Claim submitted for coverage under this Policy, if the total amount of Loss (including Defense Costs) incurred on such Claim covered by this Policy reaches 50% of the applicable Retention Amount, the Insureds agree not to incur any additional Defense Costs, settle or offer to settle any Claim, assume any contractual obligation, admit liability, voluntarily make any payment or confess or otherwise consent to any damages or judgments with respect to such Claim without the Insurer's prior written consent, which shall not be unreasonably withheld.

4. Plaintiffs' claims may be barred, in whole or in part, by the doctrines of waiver, estoppel (including, without limitation, judicial estoppel and quasi estoppel), unjust enrichment, unclean hands, laches, assumption of the risk, and failure of Plaintiffs to mitigate their damages.

5. Any coverage provided by St. Paul is subject to and limited by the limits, provisions, limitations, conditions, definitions, retentions, and exclusions set forth in the subject Policies. The applicable provisions listed herein are based upon information currently known to St. Paul and it reserves the right to raise supplement and assert other terms, conditions and exclusions of the subject Policies as may be appropriate.

6. St. Paul intends to rely upon any affirmative or other defenses that may become known or disclosed to it during the course of discovery and, therefore, reserves the right to amend its answer to assert such defenses.

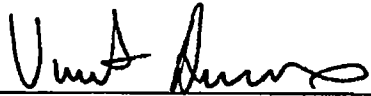
### **III. PRAYER**

WHEREFORE, Defendant St. Paul Mercury Insurance Company requests that Plaintiffs take nothing by this suit and that it recover its costs from Plaintiffs, and all other relief, both

general and special, at law and in equity, to which Defendant may show itself to be justly entitled.

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER, L.L.P.**

By: 

J. Price Collins

State Bar No. 04610700

Vincent J. Ansiaux

State Bar No. 24036143

4800 Bank of America Plaza

901 Main Street

Dallas, Texas 75202-3758

Phone: 214-698-8000

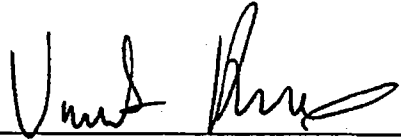
Fax: 214-698-1101

**ATTORNEYS FOR ST. PAUL  
MERCURY INSURANCE COMPANY**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Defendant St. Paul Mercury Insurance Company's Original Answer was served on the following counsel of record in accordance with the Texas Rules of Civil Procedure and the Texas Local Rules on this the 7th day of May, 2010:

Blake S. Evans  
Stephen Burnett  
Schubert & Evans, P.C.  
900 Jackson, Suite 630  
Dallas, Texas 75202  
*Via CM RRR No. 7160 3901 9848 0004 5496 and*  
*E-mail: bevans@schubertevans.com, sburnett@schubertevans.com*

  
\_\_\_\_\_  
Vincent J. Ansiaux

# WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

Bank of America Plaza, 901 Main Street, Suite 4800, Dallas, TX 75202-3758

Tel: 214.698.8000 Fax: 214.698.1101

Albany • Baltimore • Boston • Chicago • Dallas • Garden City • Houston • Las Vegas • London • Los Angeles • McLean  
Miami • Newark • New York • Orlando • Philadelphia • San Diego • San Francisco • Stamford • Washington, DC • White Plains  
Affiliates: Berlin • Cologne • Frankfurt • Mexico City • Munich • Paris

www.wilsonelser.com

Direct Dial No. (214) 698-8096

E-mail: [vincent.ansiaux@wilsonelser.com](mailto:vincent.ansiaux@wilsonelser.com)

May 7, 2010

Via CM RRR No. 7160 3901 9848 0004 5489

Clerk of Court

96<sup>th</sup> Judicial District

Tim Curry Justice Center - 7th Floor

401 W. Belknap

Fort Worth, TX 76196-0225

Re: Cause No. 096-244779-10;  
*D.R. Horton, Inc., et al. v. St. Paul Mercury Insurance Company*  
Our File No. 7648.197

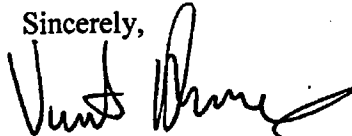
Dear Sir/Madam:

Enclosed are an original and one copy of Defendant St. Paul Mercury Insurance Company's Original Answer in the above-referenced case. Please file the original and return a file-marked copy to our office in the enclosed, self-addressed, postage paid envelope.

By copy of this letter, all counsel of record are being provided with a copy of same via certified mail, return receipt requested and e-mail.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Vincent J. Ansiaux

VJA:ij  
Enclosures

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cc: Blake S. Evans  
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